IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

::::

ORDER

S.B. CIVIL WRIT PETITION 3099/2005- NAND RAM VS. STATE OF RAJASTHAN & ORS.

WRIT PETITOIN UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 21st November, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate, for the respondents.

<><><>

BY THE COURT: -

The petitioner in this writ petition has challenged the order dated 31.1.2005 passed by the appropriate Government under Section 12(5) of the Industrial Disputes Act, 1947. By the said order, the appropriate Government has declined to

make reference to the Industrial Tribunal-cum-Labour Court for adjudication.

Shri Harish Purohit, learned counsel for the petitioner argued that the petitioner was appointed on the post of 'Mate'. While he was so working, the respondent no.5 Asstt. Enigneer, Irrigation Department, Jakham Priyojna tried to victimize him and transferred him to Hanumangarh. He being a low paid employee could not afford to go and join at Hanumangarh and therefore he filed a writ petition being S.B. Civil Writ Petition No.1148/2001 through his Union before this Court alongwith other similarly situated persons. This Court by its order dated 17th March, 2001 stayed the operation of the order of transfer passed by the respondent no.5. Thereupon, the petitioner alongwith other similarly situated persons were called for obtaining signatures on an application by giving assurance that their transfers shall be cancelled. The petitioner as well as other similarly situated persons being illiterate made their signatures on such application on 15.5.2001. He later came to know that it was an application for voluntary retirement and

the petitioner was also voluntarily retired from service on 15.5.2001. The respondent no.5 as such committed a fraud upon the petitioner taking advantage of the illiteracy of the petitioner. When the petitioner came to now this fact, he gave notice through his counsel to the respondent no.5 on 28.5.2001 but no reply was given to that effect. The petitioner and other similarly situated persons thereafter approached various forums of the State Government about the grievance. A committee was thereupon constituted but no action was taken. When no option was left, the petitioner moved an application before the conciliation officer on 20.2.2004. The respondents filed reply to the application stating therein that the petitioner could not be immediately relieved on transfer because of the interim order passed by this Court. On the stay order being vacated, the executing court by order dated 9.12.2001 directed for relieving of the petitioner then he requested for voluntarily retirement on 20.5.2001 in accordance with Rule 15 of the Rajasthan Service (Pension) Rules, 1996. The allegation of the petitioner that the respondent no.5 obtained his signatures by misleading and

further allegation that he took advantage of the petitioner being illiterate were denied. On receipt of the report from the concerned officer, the appropriate Government refused to make the reference by the impugned order. He therefore prayed that the writ petition may be allowed.

Shri Rameshwar Dave, learned Dy. Government Government while opposing the writ petition argued that the industrial dispute was raised after delay of about four years and that the order dated 31.1.2005 was in conformity with law on the subject. The application for voluntarily retirement was submitted by the petitioner himself. He thus argued that writ petition be dismissed.

I have considered the arguments advanced by the learned counsel for the parties and perused the record.

The petitioner has asserted that when he came to know about the application for his voluntary retirement submitted on 15.5.2001, he gave a legal notice to the respondents throug his

counsel on 28.5.2001. This fact has been stated by the petitioner not only before this court, but also before the conciliation officer in his application in para no.6. The respondent in reply to para no.6 of the said application filed before the conciliation officer have although given a detailed narration but they have not denied the fact about submission of notice by the petitioner.

In the circumstances therefore it is evident that the petitioner has raised his grievance against the order of voluntary retirement immediately after 15th May, 2001. Even if the application before the conciliation officer was submitted by him delayed on 20.2.2004, that by itself could not form any basis for refusing to make reference. Whether or not the signature of the petitioner on the application for voluntary retirement was obtained by taking advantage of his illiteracy or by giving wrong impression, this being a question of fact, could be determined only on the basis of evidence. Moreover, the allegation whether the petitioner was made to sign on the assurance that his transfer order shall be cancelled can be

proved and disproved only on the basis of evidence. Although eventually what the management contends may be proved true but the fact remains that refusing to make a reference on this ground would tantamount to pre-judging the issue. On the same logic therefore if the order is upheld that would tantamount to accepting their contentions that the petitioner had voluntarily retired on his request and therefore would also amount to rejecting his assertion that his signatures were obtained by misleading him. In my considered opinion, the appropriate government erred in law in refusing to make a reference.

In the result, the writ petition is allowed. The order dated 31.1.2005 is quashed and set aside. The appropriate Government is directed to make a reference to the labour court/industrial tribunal within a period of two months from the date of receipt/supply of certified copy of this judgment.

No order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-